

Cote, D.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

TAKEDA PHARMACEUTICAL COMPANY)
LIMITED, TAKEDA PHARMACEUTICALS)
NORTH AMERICA, INC., TAKEDA GLOBAL)
RESEARCH AND DEVELOPMENT CENTER,)
INC., WATSON PHARMACEUTICALS, INC.)
and ANDRX LABS, LLC.)

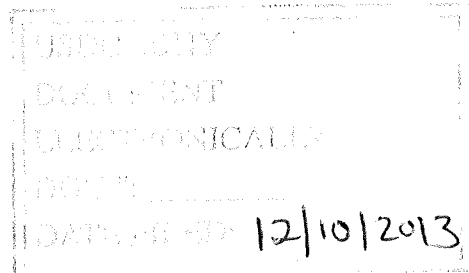
Plaintiffs,)

Civil Action No. 12-CV-00024(DLC)

v.)

MYLAN, INC. and MYLAN)
PHARMACEUTICALS, INC.,)

Defendants.)



TAKEDA PHARMACEUTICAL COMPANY)
LIMITED, TAKEDA PHARMACEUTICALS)
NORTH AMERICA, INC., TAKEDA GLOBAL)
RESEARCH AND DEVELOPMENT CENTER,)
INC., WATSON PHARMACEUTICALS, INC.)
and ANDRX LABS, LLC.)

Plaintiffs,)

Civil Action No. 12-CV-2038(DLC)

v.)

MYLAN, INC. and MYLAN)
PHARMACEUTICALS, INC.,)

Defendants.)

STIPULATION AND ~~PROPOSED~~ ORDER OF PARTIAL DISMISSAL

Plaintiffs and counterdefendants, Takeda Pharmaceutical Company Limited, Takeda Pharmaceuticals U.S.A., Inc. (formerly known as Takeda Pharmaceuticals North America, Inc.), and Takeda Development Center Americas, Inc.'s (formerly known as Takeda Global Research and Development Center, Inc.) (collectively, "Takeda"); Actavis, Inc. (formerly known as

Watson Pharmaceuticals, Inc.) and Andrx Labs, LLC (collectively, "Actavis"); and defendants and counterplaintiffs Mylan Inc. and Mylan Pharmaceuticals Inc. (collectively, "Mylan"), appearing through counsel, hereby state that:

1. Andrx Labs, LLC owns all right, title and interest in and to United States Patent No. 6,866,866 ("the '866 patent"), entitled "CONTROLLED RELEASE METFORMIN COMPOSITIONS," which issued on March 15, 2005;

2. Watson Pharmaceuticals, Inc. owns all right, title and interest in and to United States Patent No. 7,785,627 ("the '627 patent"), entitled "PHARMACEUTICAL FORMULATION CONTAINING A BIGUANIDE AND A THIAZOLIDINEDIONE DERIVATIVE" which issued on August 31, 2010;

3. Mylan Pharmaceuticals Inc. has filed Abbreviated New Drug Application No. 203488 seeking approval to market (i) extended release tablets comprising a combination of 15 mg/1000 mg of pioglitazone hydrochloride/metformin hydrochloride, and (ii) extended release tablets comprising a combination of 30 mg/1000 mg of pioglitazone hydrochloride/metformin hydrochloride;

4. On January 3, 2012, Actavis, along with co-plaintiffs Takeda, filed Civil Action No. 12 Civ. 00024 in the United States District Court for the Southern District of New York against Mylan alleging infringement of the '866 and '627 patents under, inter alia, 35 U.S.C. §271(e)(2)(A);

5. On July 12, 2013, Actavis, along with co-plaintiffs Takeda, filed a First Amended Complaint in Civil Action No. 12 Civ. 00024 in the United States District Court for the Southern District of New York against Mylan alleging infringement of certain patents but not the '866 and '627 patents under, inter alia, 35 U.S.C. §271(e)(2)(A);

6. In response to Actavis's filing of its First Amended Complaint, Mylan filed counterclaims on July 24, 2013 seeking a declaratory judgment of noninfringement and invalidity of, inter alia, the '866 and '627 patents; and

7. Actavis covenanted not to sue Mylan for infringement of the '866 and '627 patents as set forth in a letter dated September 11, 2013;

Pursuant to the foregoing, upon the stipulation, consent and request of the parties and for good cause shown, the Court hereby ORDERS that:

- a. Count III ("Declaratory Judgment of Non-Infringement of the '866 and '627 Patents") of Mylan's counterclaims and related claims for relief filed on July 24, 2013 in Civil Action No. 12 Civ. 00024 are hereby DISMISSED WITH PREJUDICE;
- b. Count IV ("Declaratory Judgment of Invalidity of the '866 and '627 Patents") of Mylan's counterclaims and related claims for relief filed on July 24, 2013 in Civil Action No. 12 Civ. 00024 are hereby DISMISSED WITH PREJUDICE; and
- c. Count V ("Declaratory Judgment of Unenforceability of the '866 Patent") of Mylan's counterclaims and related claims for relief filed on July 24, 2013 in Civil Action No. 12 Civ. 00024 are hereby DISMISSED WITH PREJUDICE; and
- d. Takeda, Actavis, and Mylan shall each bear their own costs and attorneys' fees associated herewith.

So ordered.


Janice G. Lee
September 9, 2013

Dated: December 4, 2013

Attorneys for Plaintiffs

Takeda Pharmaceutical Company Limited, Takeda Pharmaceuticals U.S.A., Inc. (formerly known as Takeda Pharmaceuticals North America, Inc.), and Takeda Development Center Americas, Inc.'s (formerly known as Takeda Global Research and Development Center, Inc.),

By their attorneys,


Anthony J. Viola
EDWARDS WILDMAN PALMER LLP
750 Lexington Avenue
New York, NY 10022
(212) 308-4411
Email: aviola@edwardswildman.com

David G. Conlin (admitted *pro hac vice*)
Kathleen B. Carr (admitted *pro hac vice*)
Adam P. Samansky
EDWARDS WILDMAN PALMER LLP
111 Huntington Avenue
Boston, MA 02199
(617) 239-0100
Email: dconlin@edwardswildman.com
Email: kcarr@edwardswildman.com
Email: asamansky@edwardswildman.com

Actavis, Inc. (formerly known as Watson Pharmaceuticals, Inc.) and Andrx Labs, LLC

By their attorneys,

Jason A. Nagi
POL SINELLI SHUGHART PC
900 Third Avenue, 21st Floor
New York, NY 10022
(212) 684-0199
Email: jnagi@polsinelli.com

Gary E. Hood (admitted *pro hac vice*)
POL SINELLI SHUGHART PC
161 N. Clark Street, Suite 4200
Chicago, IL 60601
(312) 819-1900
Email: ghoo@polsinelli.com

Keith J. Grady (admitted *pro hac vice*)
Robyn H. Ast (admitted *pro hac vice*)
Karen M. Zelle (admitted *pro hac vice*)
POL SINELLI SHUGHART PC
100 South Fourth Street, Suite 1000
St. Louis, MO 63102
(314) 889-8000
Email: kgrady@polsinelli.com
Email: rast@polsinelli.com
Email: kzelle@polsinelli.com

Dated: December 4, 2013

Attorneys for Plaintiffs

Takeda Pharmaceutical Company Limited, Takeda Pharmaceuticals U.S.A., Inc. (formerly known as Takeda Pharmaceuticals North America, Inc.), and Takeda Development Center Americas, Inc.'s (formerly known as Takeda Global Research and Development Center, Inc.).

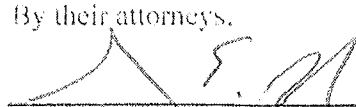
By their attorneys,

Anthony J. Viola
EDWARDS WILDMAN PALMER LLP
750 Lexington Avenue
New York, NY 10022
(212) 308-4411
Email: aviola@edwardswildman.com

David G. Conlin (admitted *pro hac vice*)
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Adam P. Samansky
EDWARDS WILDMAN PALMER LLP
111 Huntington Avenue
Boston, MA 02199
(617) 239-0100
Email: dconlin@edwardswildman.com
Email: kcarr@edwardswildman.com
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POL SINELLI SHUGHART PC
900 Third Avenue, 21st Floor
New York, NY 10022
(212) 684-0199
Email: jnagi@polsinelli.com


Gary E. Hood (admitted *pro hac vice*)
POL SINELLI SHUGHART PC
161 N. Clark Street, Suite 4200
Chicago, IL 60601
(312) 319-1900
Email: ghoo@polsinelli.com

Keith J. Grady (admitted *pro hac vice*)
Robyn H. Ast (admitted *pro hac vice*)
Karen M. Zelle (admitted *pro hac vice*)
POL SINELLI SHUGHART PC
100 South Fourth Street, Suite 1000
St. Louis, MO 63102
(314) 889-8000
Email: kgrady@polsinelli.com
Email: rast@polsinelli.com
Email: kzelle@polsinelli.com

Attorneys for Defendants

Mylan Inc. and
Mylan Pharmaceuticals Inc.

By their attorneys,


Michael S. Sommer
Tonia Ouellette Klausner
WILSON SONSINI GOODRICH & ROSATI, P.C.
1301 Avenue of the Americas, 40th Floor
New York, NY 10019
Tel: (212) 999-5800
Fax: (212) 999-5899
Email: msommer@wsgr.com
Email: tklausner@wsgr.com

T.O. Kong (*pro hac vice*)
Arlana Chung-Han (*pro hac vice*)
WILSON SONSINI GOODRICH & ROSATI, P.C.
One Market Street
Spear Tower, Suite 3300
San Francisco, CA 94105
Tel: (415) 947-2000
Fax: (415) 947-2099
Email: tkong@wsgr.com
Email: achung@wsgr.com

Matthew R. Reed (*pro hac vice*)
WILSON SONSINI GOODRICH & ROSATI, P.C.
650 Page Mill Road
Palo Alto, CA 94304
Tel: (650) 493-9300
Fax: (650) 493-6811
Email: mreed@wsgr.com

Elham F. Steiner
Wendy L. Devine (*pro hac vice*)
Matthew J. Bresnahan (*pro hac vice*)
WILSON SONSINI GOODRICH & ROSATI, P.C.
12235 El Camino Real, Suite 200
San Diego, CA 92130
Tel: (858) 350-2300
Fax: (858) 350-2399
Email: esteiner@wsgr.com
Email: wdevine@wsgr.com
Email: mbresnahan@wsgr.com

SO ORDERED, this _____ day of _____, 2013.

Denise L. Cote
UNITED STATES DISTRICT JUDGE

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